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4-24-2003

## EEOC v. West Covina

Judge Stephen V. Wilson

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## EEOC v. West Covina

### Keywords

EEOC, West Covina Motors, 2:02-cv-06382, consent decree, retaliation, sexual harassment, sex, female, automotive, employment law, title VII

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CENTRAL DISTRICT OF CALIFORNIA  
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12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14 EQUAL EMPLOYMENT  
15 OPPORTUNITY COMMISSION,

16 Plaintiff,

17 v.

18 WEST COVINA MOTORS, INC.,  
d/b/a Clippinger Chevrolet  
19 Oldsmobile and West Covina Dodge,

20 Defendant.

21 CASE NO. CV 02-6382-SVW(Ex)

22 ~~PROPOSED~~ CONSENT  
DECREE

Hon. Stephen V. Wilson

23 On August 15, 2002, the Equal Employment Opportunity Commission  
24 (EEOC) filed a Complaint against West Covina Motors, Inc., d/b/a Clippinger  
25 Chevrolet Oldsmobile and West Covina Dodge, alleging that Stephanie Kalm had  
26 been subjected to sexual harassment and retaliation in violation of Title VII of the  
27 Civil Rights Act of 1964 as amended ("Title VII"), 42 U.S.C. § 2000e *et seq.* On  
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1 October 9, 2002, Defendant filed an Answer to the EEOC's Complaint denying  
2 the unlawful conduct alleged and asserting various defenses.

3 For purposes of settlement and compromise, the parties wish to resolve the  
4 instant controversy without the expense, delay, and burden of further litigation.

5 The parties agree that: (i) this Court has jurisdiction over the parties to and the  
6 subject matter of this action; (ii) the purposes of Title VII will be furthered by the  
7 implementation of this Decree; (iii) this Decree is intended to and does resolve  
8 all matters in controversy in this lawsuit among the Parties; and (iv) the terms of  
9 this Decree constitute a fair and equitable resolution of all issues in this lawsuit.

10 **BASED UPON THE mutual promises, covenants, and agreements between**  
11 **the Parties, subject to approval by the Court, it is HEREBY AGREED BY THE**  
12 **PARTIES AS FOLLOWS:**

13 1. The term "Defendant" includes the named Defendant, its successors  
14 and assigns.

15 2. The terms "Settling Parties" or "Parties" refer to Plaintiff and  
16 Defendant.

17 3. This Decree, entered with the consent of the Parties for the purposes  
18 of settlement and resolution of all claims pending in this lawsuit, shall not  
19 constitute an adjudication on the merits of this lawsuit and shall not be construed  
20 as an admission by the Defendant of any violation of Title VII or any executive  
21 order, law, rule or regulation. Defendant denies and disputes that it has violated  
22 any law.

23 4. The Parties agree that the United States District Court for the Central  
24 District of California shall retain jurisdiction over this lawsuit for the term of this  
25 Consent Decree for purposes of enforcing the terms of the Decree.

26 5. In exchange for the promises contained herein, subject to approval  
27 by the Court, EEOC waives and relinquishes its right to claim or make  
28 application for costs from Defendant in any way arising out of this litigation or

1 the underlying charges filed with the EEOC. Payment under the terms specified  
2 below constitutes full satisfaction of any and all claims for such attorneys' fees  
3 and costs.

4 6. The Settling Parties further agree to issue a mutually agreeable press  
5 release relating to the mutually agreeable resolution of all issues of the case.  
6 Nothing in this Decree requires the EEOC to keep the terms of any agreement  
7 underlying this Decree as confidential.

8 7. In exchange for of the undertakings and promises set forth herein,  
9 the EEOC agrees that upon the expiration of this Consent Decree by its terms as  
10 set forth below, it shall be dismissed.

11 8. Defendant, with its insurer, agrees to pay Stephanie Kalm the gross  
12 sum of seventy-five thousand dollars (\$75,000.00). This amount will be paid  
13 directly to Stephanie Kalm by check transmitted to Ms. Kalm via deposit with  
14 Federal Express, at the address provided to defendant by EEOC, no later than 15  
15 days after entry of this Decree by the Court, Defendant's insurer shall issue the  
16 appropriate IRS forms, including any 1099 forms, to Ms. Kalm. A copy of the  
17 check and release shall be simultaneously mailed to the EEOC, c/o Anna Park,  
18 Regional Attorney, 255 East Temple Street, Fourth Floor, Los Angeles,  
19 CA 90012.

20 9. In further exchange for the promises and undertakings contained  
21 herein, subject to Court approval, Defendant also agrees to the following:

22 a. It will not implement or permit any adverse employment  
23 action, policy or practice with the purpose or intent of retaliating against any  
24 current or former employee of defendant in violation of Title VII, including any  
25 person who participated in this lawsuit or in the investigation of the Charging  
26 Party's EEOC Charge of Discrimination, Charge No. 340A16063, nor will it  
27 discriminate against any person who opposed the practices complained of in this  
28 action, because he or she opposed any practice of racial harassment, sexual

1 harassment or sex-based harassment; filed a Complaint in Court or filed a Charge  
2 of Discrimination alleging such a practice; testified, or participated in any manner  
3 in an investigation (including any internal investigation by Defendant), or hearing  
4 in connection with this case and/or relating to any claim of sexual harassment or  
5 sex-based harassment; was identified as a possible witness in this action; and/or  
6 sought and/or received any monetary and/or non-monetary relief in accordance  
7 with this Settlement Agreement;

8           b. It will enforce policies to prevent sexual harassment in  
9 violation of Title VII; it will not engage in or be a party to any action, policy or  
10 practice that has the effect of harassing or intimidating any employee on the basis  
11 fo his or her gender an/or creating, facilitating or permitting the existence of a  
12 work environment that is hostile to its employees, because of gender.

13           c. Within 20 days after entry of this Consent Decree, and  
14 throughout the term of this Consent Decree, Defendant shall post, in its break  
15 rooms, an employee information poster or similar poster which includes an  
16 outline of employees' Title VII rights.

17           d. Within 30 days after entry of this Consent Decree, for existing  
18 employees, and within 14 days of hire, for newly hired employees, Defendant  
19 shall distribute to each employee its revised policy concerning sexual harassment  
20 and retaliation, in the form as attached hereto and incorporated herein;

21           e Within 30 days after entry of this Consent Decree, Defendant  
22 shall provide an online anti-harassment training program provided by Fisher &  
23 Phillips LLP/Prevention Point for its current hourly employees; and shall provide  
24 the same online program for newly hired hourly employees as part of such newly  
25 hired employees' orientation.

26           f. Within 60 days after entry of this Consent Decree, Defendant  
27 shall provide, via Fisher & Phillips LLP/Prevention Point, a one-half-day training

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1 seminar for its managers, on the topic of sexual harassment and retaliation. The  
2 training will be repeated annually during the term of this Decree.

3 g. Within 90 days after entry of this Consent Decree, Defendant  
4 shall provide training to its Human Resources Manager and one additional  
5 Manager responsible for investigating complaints of harassment on how to  
6 investigate complaints and on the appropriate actions to take upon the completion  
7 of investigation. The training will be repeated annually during the term of this  
8 Consent Decree.

9 h. During the term of this Consent Decree, Defendant will  
10 annually certify that all trainings have been completed pursuant to the above  
11 paragraphs. Defendant will also certify, within 30 days after the expiration of this  
12 Consent Decree, that any trainings that may have been required under this  
13 Consent Decree during the period from January 15 to July 15, 2005, were  
14 completed. Each Certification will identify the title of the training, the dates, and  
15 the attendees. The Certification will be sent to EEOC, c/o Anna Park, Regional  
16 Attorney, 255 East Temple Street, Fourth Floor, Los Angeles, CA 90012.  
17 Defendant shall provide records of the trainings upon request of the EEOC.

18 10. If any Party disputes performance required in this Consent Decree, it  
19 shall provide notice to the other Party. The Parties shall have thirty days to  
20 attempt to resolve the dispute without seeking Court intervention. If Court  
21 intervention is required, the EEOC may seek all available relief.

22 11. The claims resolved by this Consent Decree are those which were  
23 alleged in the Charge of Discrimination filed by Stephanie Kalm, and all other  
24 claims asserted in the Complaint and other pleading in this lawsuit. This Decree  
25 does not resolve any other Charge with the EEOC or which may be filed in the  
26 future with the EEOC.

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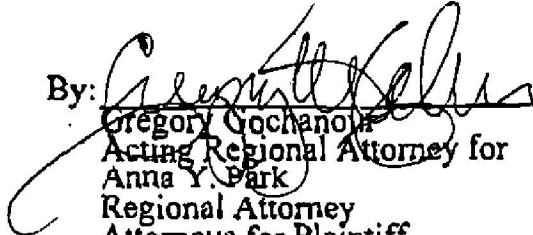
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12. This Consent Decree shall remain in effect until July 15, 2005.


EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Anna Y. Park  
Samantha E. Blake

Date: April 17, 2003

By:   
Gregory Cochano  
Acting Regional Attorney for  
Anna Y. Park  
Regional Attorney  
Attorneys for Plaintiff

FISHER & PHILLIPS LLP  
Mairen C. Kelly

Date: April 17, 2003

By:   
Mairen C. Kelly  
Attorneys for Defendant and for  
Defendant's Insurer

  
-(PROPOSED) ORDER

This Court having found that the foregoing Consent Decree was entered into in good faith and that the terms of the foregoing Consent Decree are fair, reasonable, and just, the provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is HEREBY ORDERED.

This Court shall retain jurisdiction over this matter during the pendency of the term of this Consent Decree.

IT IS SO ORDERED.

Date: 4/23/03

  
Judge of the U.S. District Court



SCANNED

## **NOTICE REGARDING HARASSMENT**

We do not tolerate unlawful harassment of any of our employees, customers, vendors, suppliers or independent contractors. Any form of harassment which violates federal, state or local law, including, but not limited to harassment related to an individual's race, religion, color, sex, sexual orientation, national origin, ancestry, citizenship status, uniformed service member status, marital status, pregnancy, age, medical condition (cancer related or HIV/AIDS related), or disability is a violation of this policy and will be treated as a disciplinary matter. For these purposes the term "harassment," includes slurs and any other offensive remarks, jokes, other verbal, graphic, or physical conduct.

In addition to the above listed conduct, "sexual harassment" can also include the following examples of unacceptable behavior:

- unwanted sexual advances
- offering an employment benefit (such as a raise or promotion or assistance with one's career) in exchange for sexual favors, or threatening an employment detriment (such as termination, demotion, or disciplinary action) for an employee's failure to engage in sexual activity
- visual conduct, such as leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters
- verbal sexual advances, propositions or requests
- verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations
- physical conduct, such as touching, assault, impeding or blocking movements

If you have any questions about what constitutes harassing behavior, ask your supervisor or another management official.

Violation of this policy will subject an employee to disciplinary action, up to and including immediate discharge. Additionally, under AB 1856, employees may be held personally liable for harassing conduct that violates the California Fair Employment and Housing Act.

If you feel that you are being harassed by another employee, you should **immediately contact Maureen E. Rooks, Administrative Assistant or Ziad Alhassen, President to discuss your complaint.** You may be assured that you will not be penalized in any way for reporting a harassment problem.

PHILLIPS

All complaints of unlawful harassment which are reported to management will be investigated as promptly as possible and corrective action will be taken where warranted. The Company prohibits employees from hindering our own internal investigations and our internal complaint procedure. All complaints of unlawful harassment which are reported to management will be treated with as much confidentiality as possible, consistent with the need to conduct an adequate investigation.

Harassment of employees in connection with their work by non-employees may also be a violation of this policy. Any employee who experiences harassment by a non-employee, or who observes harassment of an employee by a non-employee should report such harassment to **Maureen E. Rooks, Administrative Assistant** or **Ziad Alhassen, President**. Appropriate action will be taken against violation of this policy by any non-employee.

Harassment of our customers or employees of our customers, vendors, suppliers or independent contractors, by our employees is also strictly prohibited. Such harassment includes sexual advances, verbal or physical conduct of a sexual nature, sexual comments and gender-based insults. Any such harassment will subject an employee to disciplinary action, up to and including immediate discharge.

Your notification of the problem is essential to us. We cannot help resolve a harassment problem unless we know about it. Therefore, it is your responsibility to bring those kinds of problems to our attention so that we can take whatever steps are necessary to correct the problem.

If management finds that an employee has violated our Company policy, appropriate disciplinary action will be taken, up to and including termination.

The California Department of Fair Employment and Housing may also investigate and process complaints of harassment. Violators are subject to penalties and remedial measures that may include sanctions, fines, injunctions, reinstatement, back pay, and damages. The address of the local office of the Department of Fair Employment and Housing follows: 611 West Sixth Street, Suite 1500, Los Angeles, CA 90017.

Your notification to the Company is essential to us. You may be assured that you will not be penalized in any way for reporting a harassment problem. It is unlawful for an employer to retaliate against employees who oppose the practices prohibited by the Fair Employment and Housing Act, or file complaints, or otherwise participate in an investigation, proceeding, or hearing conducted by the DFEH or FEHC. Similarly, the Company prohibits employees from hindering our own internal investigations and our internal complaint procedure.

If management finds that an employee has violated our Company policy, appropriate corrective action will be taken. Furthermore, as part of our attempt to remedy complainant's concerns, the complainant will be informed of remedial measures and disciplinary actions imposed against the violator.

**We cannot help resolve a harassment problem unless we know about it. Therefore, it is your responsibility to bring those kinds of problems to our attention so that we can take the necessary steps to correct the problem.**

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**EMPLOYEE ACKNOWLEDGMENT  
OF RECEIPT OF NOTICE REGARDING HARASSMENT**

This will acknowledge that I received a copy of the Notice Regarding Harassment and that I will comply with its requirements. I understand that under AB 1856, I will be held personally liable for harassing conduct that violates the California Fair Employment and Housing Act.

**PRINT FULL NAME** \_\_\_\_\_

**SIGNED** \_\_\_\_\_

**DATE** \_\_\_\_\_

**(RETAIN IN EMPLOYEE'S PERSONNEL FILE)**